



# **A Guide To Advance Directives**


## **Deciding Your Future Health Treatment**



*Prepared by the*

**Illinois Guardianship and Advocacy Commission**

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**A GUIDE  
TO ADVANCE DIRECTIVES:  
DECIDING YOUR FUTURE  
HEALTH TREATMENT**

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## ABOUT THE ILLINOIS GUARDIANSHIP AND ADVOCACY COMMISSION

The **Illinois Guardianship and Advocacy Commission** was created by the Illinois General Assembly in 1979 and is governed by eleven volunteer citizens who are appointed by the Governor and confirmed by the Senate. Its mission, simply stated, is to safeguard the legal rights of persons with disabilities. Located in nine offices throughout the state, the Commission strives to fulfill its mission through the work of three divisions:

**The Human Rights Authority**, which, through nine regional panels of volunteers, investigates allegations that the legal rights of persons with disabilities have been violated and recommends remedial action;

**The Legal Advocacy Service**, which, through its staff attorneys, provides legal advice and representation to individuals with disabilities, both adults and minors, in hearings arising out of mental health laws; and

**The Office of State Guardian**, which serves as court-appointed guardian of last resort for adults with disabilities and is the largest provider of adult guardianship services in the United States.

## **INTRODUCTION TO ADVANCE DIRECTIVES FOR MENTAL HEALTH TREATMENT**

Like most adults, you are probably used to making your own decisions, but what would happen if you became ill and were unable to make reasoned decisions about the medical treatment you should, or should not, receive? If you were diagnosed as having a mental illness, a judge may be asked to make treatment decisions for you. If so, after a court hearing, a judge could order that you be admitted to an in-patient mental health facility and be given treatment.

There are, however, disadvantages to asking judges to make mental health treatment decisions. Going to court can be stressful, and it can take several days, or several weeks, before the judge makes a decision. Even if you are later pleased with the judge's decision, you might have liked it better had it been made more quickly. On the other hand, you might not be pleased with the judge's decision; the judge may have ordered treatment that you never would have consented to yourself, or the judge may have refused to order treatment that you might have consented to at a time when you had the capacity to make your own health care decisions.

This brochure describes two types of legal documents which you can complete to control your future mental health treatment and to lessen the chances that a judge will be asked to make treatment decisions for you. These documents are called advance directives. In an advance directive, you can express your wishes regarding various types of mental health treatment. If, in the future, you become ill and do not have the capacity to make treatment decisions, your doctor would be required, in most cases, to follow the wishes expressed in your advance directive.

Additionally, you can use an advance directive to designate a friend or family member to make treatment decisions for you. This person, who is called an agent or an attorney-in-fact, would make decisions based on your wishes as expressed in the advance directive.

There are two types of advance directives: (1) a declaration for mental health treatment and (2) a power of attorney for health care. These two types of advance directives are described and compared in the remainder of this brochure.

At the end of the brochure, you will find the addresses and telephone numbers of the Illinois Guardianship and Advocacy Commission's nine offices. Attorneys from the Commission are available to provide you with more information about advance directives for health care and to help you complete an advance directive if you want one.

If you complete an advance directive, you may also want to fill out, and carry in your wallet, the medical alert card which is attached to the back cover of this brochure. You can use this card to identify yourself as a person with an advance directive for health care and to list the names and telephone numbers of persons who have a copy of your advance directive, making it easier to obtain a copy when you need it.

# DECLARATION FOR MENTAL HEALTH TREATMENT

## Key features at a glance

A declaration for mental health treatment:

- Is limited to decisions regarding three types of mental health treatment: psychotropic medications, electroconvulsive therapy, and in-patient hospitalization.
- Can include a designation of a person as an attorney-in-fact (that is, an agent) who would have authority to look at your mental health records and to make treatment decisions for you if you are unable to do so.
- Must be signed by two competent adults who attest that you appear to be of sound mind.
- Becomes effective only after two physicians or a judge determines that you are unable to make or communicate reasoned decisions regarding your mental health treatment.
- Must be followed by your doctor except when a court order contradicts your wishes or when there is an emergency. Moreover, despite your declaration, you can be hospitalized if you are believed to be dangerous or unable to meet your basic needs.
- Can be canceled only in writing and only if a physician determines, in writing, that you are able to make treatment decisions and able to cancel the declaration.
- Expires after three years unless, at that time, the declaration is in use and then will remain in operation until you regain capacity.

### *Expressing your treatment wishes in a declaration*

Like any advance directive, a declaration for mental health treatment allows you to put into writing your wishes regarding decisions that may have to be made in the future if you become ill and not able to make or express them for yourself. As its name indicates, however, a declaration for mental health treatment allows you to put into writing your wishes regarding only three types of mental health treatment: psychotropic medication, electroconvulsive therapy, and in-patient hospitalization.

Although limited to only three types of treatment, a declaration allows you to express your wishes regarding that treatment in a variety of ways. You can choose to list the medications you would want to receive, or you can choose to list the medications that you would not want to receive. You can also write down the circumstances under which you would or would not want to receive medications. For example, you could agree to take a certain medication but only after your doctor first attempts to treat you with another, preferred medication for a specified period of time.

Similarly, you can express your wishes regarding electroconvulsive therapy and in-patient hospitalization. If you agree to be hospitalized, you can state the particular hospital where you would like to be admitted. You can also put conditions on your agreement to be hospitalized. For example, you could agree to be hospitalized but only after you have had a chance to talk to a familiar doctor or a trusted relative. If you agree to be hospitalized, you can be hospitalized under the declaration for no more than 17 days. At the end of those 17 days, you would have to be discharged, be taken to court to be involuntarily admitted, or consent to remain hospitalized.

### *Choosing someone to make decisions for you*

Besides expressing your treatment wishes in a declaration for your doctor to follow, you could choose to designate a person to talk to your doctor and to make and express treatment decisions for you if you become unable to do so. This person is called an attorney-in-fact (that is, an agent), but they do not have to be an attorney. You can designate any trusted friend or family member to be your attorney-in-fact. You do not have to designate anyone as an attorney-in-fact if you do not want to, but, if you choose to do so, that person must agree to the designation in writing.

An attorney-in-fact (that is, your agent) would make decisions about your treatment consistent with the wishes expressed in your declaration. For example, if your doctor suggests electroconvulsive therapy for you and your declaration states that you do not want to receive electroconvulsive therapy, your attorney-in-fact must refuse that treatment on your behalf.

If you have an attorney-in-fact, decisions may be made about treatments which you did not mention in the declaration. In these cases, your attorney-in-fact would decide whether or not you would receive these treatments based on what they believed you would want. If, however, your attorney-in-fact does not know what you would want, they would make the decision based on what they believed would be best for you.

In addition to making decisions about your treatment, unless you state otherwise in your declaration, your attorney-in-fact will be able to look at your mental health records.

There are restrictions on who can be your attorney-in-fact. Your doctor, your doctor's employees, and other individuals involved in your treatment cannot be your attorney-in-fact unless they are related to you.



### **Obtaining witnesses to the declaration**

To be valid, the declaration must be witnessed by two competent adults. Those witnesses must be able to say that they know you, that you appear to be of sound mind, and that you are not completing the declaration due to duress, fraud, or undue influence.

Certain persons cannot be witnesses to your declaration. Thus, your relatives, your doctor or their relatives, other persons involved in your mental health treatment, and the person designated as your attorney-in-fact cannot witness your declaration.

### **When the declaration becomes effective**

The declaration will not be used to direct your mental health treatment as soon as you sign it. Instead, it will be used only when, and if, you become unable to make or express treatment decisions for yourself. This determination must be made by either two physicians or a judge. Thus, before your declaration will become effective, two physicians, or a judge, must determine that your ability to receive and evaluate information effectively, or your ability to communicate decisions, is so impaired that you are unable to make decisions about your mental health treatment. Until this determination is made, the declaration will not be used, and you can continue to make decisions about your treatment as you always have.

### **When your doctor need not follow your declaration**

As a general rule, after you have been determined to be unable to make treatment decisions, and after your doctor is given your declaration, they must follow the wishes expressed there. There are three exceptions to the general rule, however. First, you can be given treatment, contrary to the wishes expressed in your declaration, in an emergency. Second, regardless of your wishes regarding in-

patient hospitalization, you can still be involuntarily admitted to a mental health facility if you are alleged to meet criteria for involuntary admission. Third, you can be given treatment, contrary to the wishes expressed in your declaration, if your wishes are contradicted by a court order.

### **Changing or canceling your declaration**

If your treatment wishes change, you can change or cancel the declaration, but only under certain conditions. First, you can cancel the declaration only in writing; merely telling someone that you have changed your mind will not change the declaration. Second, a doctor must evaluate you and document that you are able to make your own treatment decisions and able to cancel your declaration. Thus, you can change or cancel your declaration only if a doctor states in writing that you are capable of doing so. Or you can redo your declaration once it expires (see next section).

### **When the declaration expires**

A declaration for mental health treatment generally will remain valid for three years after it is completed; after three years, the declaration expires, and you will have to complete a new one. However, if, at the end of three years, your declaration is being used to direct your treatment, it will remain in effect until you are able to make your own decisions again.

### **The Mental Health Treatment Preference Declaration Act**

You can learn more about declarations, and find the standard form for declarations, in the Mental Health Treatment Preference Declaration Act, 755 Illinois Compiled Statutes 43. The form is available on the Commission's web site at <https://gac.illinois.gov/>.

## POWER OF ATTORNEY FOR HEALTH CARE

### *Key features at a glance*

A power of attorney for health care:

- Can cover a wide range of health care decisions or be limited to cover only certain health care decisions, such as those involving mental health treatment.
- Must include a designation of a person as an agent who would have authority to look at your medical records, to make health care decisions for you, and to use your funds to pay for your treatment.
- Becomes effective when you want it to: when signed, or at a time when you cannot make decisions for yourself.
- Unless you specify otherwise, can be canceled at any time by destroying it, writing your decision to cancel it, or telling another adult of your decision to cancel it.
- Must be followed or your agent must be allowed to find another doctor for you. However, despite your power of attorney, you can be involuntarily hospitalized if you are believed to be dangerous or unable to meet your basic physical needs.
- Unless you specify otherwise, remains effective until you cancel it.

### *Choosing someone to make decisions for you*

Generally speaking, compared to a declaration for mental health treatment, a power of attorney gives you more options for directing your future health care. First of all, in a power of attorney, you can direct how decisions will be made regarding any type of health care. Unless you limit it, a power of attorney will be interpreted as broadly as possible and will cover all types of health care decisions, not just mental health care decisions. There are other ways in which a power of attorney gives you more options than a declaration for mental health treatment, and they will be explained in the following sections.

There is at least one important way, however, in which a power of attorney is less flexible than a declaration for mental health treatment. If you complete a power of attorney, you must designate a person who has the authority to make health care decisions for you. In a power of attorney, this person is called an agent. Although you must designate a person to be your agent, that person does not have to serve as your agent and may choose not to make health care decisions for you. If the agent does make decisions for you, they must do so in accordance with the terms of the power of attorney.

There are restrictions on who can be your agent. Neither your doctor nor any other person from whom you are receiving health care can act as your agent.

In addition to making decisions about your treatment, unless you state otherwise, your agent will be able to look at your medical records, including records that describe your mental health treatment, and will be able to use your funds to pay for your treatment.

### **Expressing your treatment wishes**

Besides choosing an agent in your power of attorney, you may express your wishes about your future health care. You do not, however, have to express your wishes; if you do not, your agent must do their best to make decisions that would be for your benefit. And, unless you limit the authority of your agent, your agent can make any and all health care decisions that need to be made for you.

If you choose, there are many ways in which you can limit the authority of your agent. For example, as already mentioned, you may decide to limit the power of attorney to cover only mental health treatment or to cover only some types of mental health treatment. Additionally, you can write down the circumstances under which you would want your agent to consent to, or refuse, certain types of treatment.

### **When the power of attorney becomes effective**

In general, a health care power of attorney becomes effective when a physician determines you no longer have the capacity to make health care decisions.

You can, however, opt to have your power of attorney become effective upon signing and continue after you become unable to make decisions, or you could opt to share information with your agent upon signing (for the purpose of helping you make decisions), although you still have the capacity to make decisions for yourself.

### **When your doctor need not follow your power of attorney**

Either you or your agent must give your power of attorney to your doctor. Afterwards, as long as your agent is making decisions in line with your power of attorney, your doctor

must follow the decisions made by your agent. If for some reason your doctor is unwilling to follow your agent's decisions, your doctor must inform your agent and allow them to find another doctor for you. Additionally, regardless of your wishes, your agent cannot prevent you from being involuntarily admitted to a mental health facility if you are alleged to meet criteria for involuntary commitment.

### **Changing or revoking (cancelling) your power of attorney**

To change parts of your power of attorney, you must describe the changes you want to make in writing.

On the other hand, unless you specify otherwise, there are many ways you could cancel your entire power of attorney. In addition to putting your decision to cancel the power of attorney in writing, you can tear or destroy the power of attorney, or you can tell another adult about your decision to cancel the power of attorney and ask that person to put your decision in writing for you.

### **Delayed revocation, an important feature!**

If you think you might cancel your power of attorney at a time when you most need it, you may opt for a 30-day "delayed revocation" of your power of attorney so that you may still have your agent make decisions for you for up to 30 days after you cancel your power of attorney. This is a helpful feature to prevent cancelling a power of attorney during times of illness.

### **When the power of attorney expires**

Unless you specify otherwise, your power of attorney will not expire and will be valid for the rest of your life.

### **The Illinois Power of Attorney Act**

You can learn more about powers of attorney, and find the standard health care power of attorney form, in the Illinois Power of Attorney Act, 755 Illinois Compiled Statutes 45. The standard health care power of attorney form is available on the Commission's web site at <https://gac.illinois.gov/>.

### **Declaration for Mental Health Treatment**

- A declaration is limited to decisions regarding mental health treatment.
- You can list your treatment preferences without appointing an attorney-in-fact (agent) to make decisions for you; you can appoint an attorney-in-fact without listing your treatment preferences; or you can both list your preferences and appoint an attorney-in-fact.
- Two witnesses must sign the declaration and attest that you appear to be of sound mind.
- The declaration is effective only when two physicians or a judge determine that you lack the capacity to consent to or refuse treatment.
- Your doctor must follow your declaration except when a court order contradicts your wishes or when there is an emergency. Moreover, despite your declaration, you can be involuntarily hospitalized if you are alleged to meet involuntary-commitment criteria.
- You can cancel the declaration only if you put it in writing and a physician states, in writing, that you have capacity to consent to or refuse treatment.

- The declaration expires after three years, unless at that point it is being used to direct your treatment; if your declaration is in use at the three-year point, the declaration is valid until you are able to make your own decisions again.

### *Power of Attorney for Health Care*

- A power of attorney can be limited to decisions regarding mental health treatment, or it can cover a wide range of health care decisions.
- You must appoint an agent to make decisions for you; you can also list your treatment preferences.
- You determine when the power of attorney becomes effective; you can make it effective immediately, or when you become unable to make health care decisions. You can also authorize your agent to access your health care information right away to help you with decision-making even when you are still able to make your own decisions.
- Your doctor must follow your power of attorney or allow your agent to find another doctor for you who will follow your power of attorney. But, despite your power of attorney, you can still be involuntarily hospitalized if you are alleged to meet involuntary-commitment criteria.
- You can cancel the power of attorney at any time by saying or doing anything which shows you want to cancel it. You can opt for a delayed cancellation if you might cancel at a time when you most need your health care power of attorney.
- Unless you specify otherwise, the power of attorney does not expire and is valid for the rest of your life.



## DECIDING WHETHER TO COMPLETE AN ADVANCE DIRECTIVE

Deciding whether or not to complete an advance directive is an important decision which only you can make for yourself. Some people like the control an advance directive can give them over their future treatment. They know that, if they begin to have symptoms of a mental illness (or symptoms that mimic mental illness), they may not be allowed to make their own treatment decisions, and judges may be asked to make decisions for them. Even if they are allowed to make their own treatment decisions, they may make decisions which they might regret later. For these reasons, they may want to make decisions about their future treatment, for themselves, before they have symptoms and while they are thinking clearly.

If you decide that you want an advance directive, you must then decide which advance directive is best for you. Some people do not want to designate an agent or an attorney-in-fact to make decisions for them, so they prefer a declaration (which does not require naming a decision maker). Others may want to create an advance directive for all types of health care, so they prefer a power of attorney.

For help in making these decisions, talk to people you know and trust. You may want to talk to your doctor. You should certainly talk with the person you are considering asking to be your agent or your attorney-in-fact. You should also talk with an attorney. Although this brochure describes some of the important features of advance directives, it is not meant to tell you everything you should know about them. Additionally, if you decide to complete an advance directive,

you will probably want to use one of the standard forms created by the Illinois legislature.

## **CONTACTING THE ILLINOIS GUARDIANSHIP AND ADVOCACY COMMISSION**

If you would like more information about advance directives, or if you would like help in completing an advance directive form, you may telephone the Commission's intake department. The intake worker will take your name and telephone number. An attorney will then call you back and, based on your level of income, will determine whether you are eligible to receive legal services from the Commission free of charge. If you are eligible for free services, the attorney will schedule an appointment with you. On the other hand, if you are not eligible for free services, you will be referred to the bar association in your area so that you can contact a member of the private bar.

You may contact the Commission at either of the following toll free numbers:

Statewide intake	866/274-8023
Statewide TTY	866/333-3362

Web site: <https://gac.illinois.gov>

You may also contact the Commission at the following addresses:

Office of the Director  
830 South Spring Street  
Springfield, IL 62704

Office of the Director  
160 N. LaSalle Street  
Suite S-500  
Chicago, IL 60601